

COPY

RECEIVED
FEDERAL ELECTION
COMMISSION

2011 NOV 21 AM 10: 21

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

CELA

FIRST GENERAL COUNSEL'S REPORT

MUR: 6472

DATE COMPLAINT FILED: May 23, 2011

DATE OF NOTIFICATION: May 31, 2011

DATE OF LAST RESPONSE: June 24, 2011

DATE ACTIVATED: July 12, 2011

EXPIRATION OF SOL: January 31, 2016

COMPLAINANT:

Vincent T. Ehmann, Jr.

RESPONDENTS:

Diane Gooch
Diane Gooch for Congress, Inc.,
and Ronald Gravino,
in his official capacity as treasurer
Strong New Jersey
The Two River Times

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(2)
2 U.S.C. § 431(8)
2 U.S.C. § 431(9)
2 U.S.C. § 432
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441b
11 C.F.R. § 101.1
11 C.F.R. § 102.1
11 C.F.R. § 102.13

INTERNAL REPORTS CHECKED:

Disclosure Reports

OTHER AGENCIES CHECKED:

12044311721

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

I. INTRODUCTION

Complainant alleges that Diane Gooch, an unsuccessful candidate in the 2010 New Jersey Sixth Congressional District Republican Primary Election, is running again for Congress but has failed to register with the Federal Election Commission (the "Commission") as a candidate and failed to designate her principal campaign committee, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). 2 U.S.C. § 432(e) and 11 C.F.R. § 101.1. Complainant further alleges that Strong New Jersey ("SNJ"), an organization funded by Gooch, is engaged in activities in support of Gooch's candidacy, including soliciting and receiving campaign contributions for Gooch through its website, receiving contributions from Gooch and her business, and disseminating a campaign mailer costing more than \$5,000, but has failed to register and report as an authorized campaign committee of Gooch in violation of the Act. 2 U.S.C. §§ 433 and 434. The complaint asserts that SNJ is "pretending to be a P.A.C." when it really is meant to "push [Gooch's] candidacy." Complainant notes that the return address on the SNJ mailer is the address for the offices of the *Two River Times*, a newspaper owned by Gooch. The complaint names as respondents Diane Gooch; Diane Gooch for Congress, Inc., Gooch's 2010 principal campaign committee (the "Committee"), and Ronald Gracino, in his official capacity as Committee treasurer; Strong New Jersey; and the *Two River Times*.

Respondents filed a joint response, denying the allegations and asserting that Gooch is not a candidate and was not a candidate at any time during the period relevant to the complaint, that SNJ did not solicit or receive contributions for Gooch or for any federal candidate, and that no improper corporate contribution resulted from SNJ's use of the address of the *Two River Times* as its return address on mailers.

12044311722

As discussed below, the available information does not indicate respondents violated the Act or Commission regulations by failing to file a Statement of Candidacy, failing to register and report as a political committee, or by using the *Two River Times* return address. We therefore recommend that the Commission find no reason to believe that Diane Gooch violated 2 U.S.C. §§ 432(e)(1) and 11 C.F.R. § 101.1(a); no reason to believe that Diane Gooch for Congress, Inc., and Ronald Gravino, in his official capacity as treasurer, violated 2 U.S.C. §§ 433 and 434; no reason to believe that Strong New Jersey violated 2 U.S.C. §§ 433, 434, and 441b; and no reason to believe that the *Two River Times* violated 2 U.S.C. § 441b.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

Gooch was an unsuccessful candidate in the June 8, 2010, New Jersey Sixth Congressional District Republican Primary Election. Diane Gooch for Congress, Inc. was Gooch's principal campaign committee, and Ronald Gravino served as the Committee's treasurer. The Committee filed its final disclosure report with the Commission on December 17, 2010, and was approved for termination on January 6, 2011. Gooch has not filed with the Commission any new registration materials for the 2012 elections, and, according to the response, is not currently a candidate for Congress, and was not a candidate at any time relevant to the complaint. Response at 3.

Gooch, a self-described philanthropist and the owner of a local small business, resides in Rumson, New Jersey. She founded SNJ on August 13, 2010, approximately two months after she lost the primary. Response at 2. SNJ is a non-profit, New Jersey-based corporation registered with the IRS as a tax-exempt political organization under section 527 of the Internal Revenue Code. See Response at 2; Ex. B, Political Organization Notice of Section 527 Status

12044311723

(Form 8871). According to its IRS Form 8871, Gooch is the chair and there are two trustees, one of whom is Gravino. Gravino is also custodian of records and the person whose signature appears on the tax returns.

SNJ's publicly available IRS tax returns for 2010 and 2011 show that it received contributions from Gooch (\$80,000); the Committee (\$19,000); and Michael Gooch, Diane Gooch's spouse, (\$140,000 and \$200,000). SNJ is not registered with and does not file disclosure reports with the Commission.

The SNJ website states that "Strong New Jersey is a group of concerned citizens ready to raise their voices to preserve and promote responsible government, individual liberty and free enterprise in our state." See <http://www.strongnewjersey.com/> (last visited on October 25, 2011). The "About Strong New Jersey" page of the website lists Gooch as its founder and describes her as a "small business owner, philanthropic leader and former Congressional candidate." It also includes a webpage entitled "About Diane Gooch," which contains a photo and biography of Gooch and notes that she has served as the Vice Chair of the Monmouth County Republican Party since 2007. The site also includes a "News" webpage listing news articles by or about SNJ, an "Engage" webpage for those wishing to volunteer for the organization, and a "Donate" webpage for donations to SNJ.¹

SNJ disseminated a direct mailer, which was attached to the complaint. SNJ used as a return address on the direct mailer a previous address of the *Two River Times*, a weekly community newspaper owned by Michael and Diane Gooch. Response at 2-3; Ex. E; <http://www.tworivertimes.com/> (last visited on October 25, 2011).

¹ The "donate" webpage does not contain any message concerning how SNJ might use the donated funds.

1 Complainant asserts that on May 18, 2011, he received an "expensive" mailer from SNJ,
2 an organization that he was "unaware of," but whose return address was the same as the *Two*
3 *River Times*, the newspaper owned by Gooch. Complaint at 1. Complainant further asserts that
4 the SNJ website contained the same information as the mailer and also "asks you to donate and
5 support Strong New Jersey and Diane Gooch for Congress." *Id.* Complainant asserts that the
6 mailer is "a fraudulent piece of political communication" and that "it pretends to be from a true
7 political action group." *Id.* Complainant asserts that SNJ has paid more than \$5,000 for the
8 direct mailer, and that SNJ solicits and receives contributions for the Gooch campaign through
9 its website, including contributions from Gooch herself "or her business," but has not registered
10 as a political committee in violation of the Act. *Id.* Finally, Complainant asserts that Gooch is
11 running for Congress in 2012, but has not registered with the Commission as a candidate or
12 designated her authorized campaign committees. Complaint at 2.

13 The SNJ mailer attached to the complaint is entitled "New Jersey is ready to stand for
14 what's right," followed by photos of an American flag, banners, and a window, with the
15 statements "Open," "Grand Opening," and "Now Open." Below the photos are the statements:
16 "Republicans are Ready to Make New Jersey Strong Again," "Stand Proud," "Strong New
17 Jersey," and "Stand United." The mailer contains additional photos of banners and flags and
18 other statements such as "Strong New Jersey will fight for Conservative Republican Principles"
19 and "Join Us. Together, We Will Make New Jersey Strong Again." The mailer also contains a
20 survey and a discussion of tax and economic issues in New Jersey. In a section entitled
21 "Spreading a Conservative Message," the mailer provides a sample of SNJ's statements in
22 editorials, television news programs, and advertisements on television and radio to "support
23 Republican candidates and conservative principles." An excerpt from an editorial entitled "Tax

12044311725

1 the Rich, Kill the Jobs" from the Newark, New Jersey *Star-Ledger*, dated October 6, 2010,
2 states: "Memo to Mr. Reid, Pelosi, and the U.S. Congress, including our own New Jersey
3 delegation in Washington: As you weigh the benefits of scoring class-war Brownie points by
4 excluding 'the rich' from an extension of the Bush tax cuts, please, use some common sense –
5 and definitely bear New Jersey in mind." The mailer has a photo of Gooch, identified as the
6 chair of the organization. The mailer states that Gooch "is a small business owner, newspaper
7 publisher, political activist and advocate for issues important to New Jersey's families and
8 communities. Diane established Strong New Jersey to advocate for the principles that make
9 America great and New Jersey strong: small business, free enterprise, a thriving shoreline, and
10 the security to pursue health, happiness and the American Dream."

11 Respondents deny the complaint's allegations. First, they assert that the Committee
12 could not accept campaign contributions through SNJ because Gooch is not currently a
13 candidate for Congress and was not a candidate at any time during the period relevant to the
14 complaint. Response at 3. Gooch lost the June 8, 2010, primary election and closed out her
15 campaign account on December 17, 2010, and the Committee was terminated on January 6,
16 2011. According to the response, Gooch has not formed any subsequent candidate committees,
17 and no such filings are on the public record. *Id.* Respondents acknowledge that SNJ's donation
18 webpage "did contain incorrect disclaimer language [indicating that the Committee was
19 soliciting contributions] that had been copied and pasted improperly by a website vendor," but
20 that the problem had since been corrected and, in any event, "[n]o contributions were ever
21 received through the website and it was properly designed to deposit any electronic
22 contributions made to Strong New Jersey, not Diane Gooch for Congress's closed bank account,
23 which would have been impossible." *Id.*

12044311726

1 Second, Respondents assert that SNJ is not a "political action committee," or required to
2 register as a political action committee, because it does not contribute to or coordinate its
3 activities with any federal candidates or committees. *Id.* They further assert that SNJ's direct
4 mailer was "principally focused on state issues more than a year prior to the next federal
5 election" and "is not an electioneering communication." *Id.* Respondents note that SNJ
6 regularly reports its ~~contributions and expenditures~~ to the IRS and, as indicated on its reports,
7 "~~does receive contributions from Diane Gooch and others, as permitted by law and without~~
8 limit." *Id.* Finally, respondents argue that there is no merit to Complainant's suggestion that
9 Gooch made an illegal corporate contribution through the use of the former address of the *Two*
10 *River Times* as a return address on the mailer. *Id.* Respondents explain they used that address
11 on the direct mailers as a matter of convenience so that Gooch would not have to use her home
12 address. *Id.* Respondents assert that even if such use is considered to be a *de minimis*
13 contribution to SNJ, it is permissible, and in any event, SNJ is not a political committee under
14 the Act, but a Section 527 tax-exempt organization registered with the IRS. *Id.* at 3-4.

15 **B. Legal Analysis**

16 **1. Allegations that Diane Gooch is a Federal Candidate**

17 The first issue is whether SNJ and Gooch conducted activities triggering candidate
18 reporting requirements under the Act. An individual becomes a candidate for federal office –
19 and thus triggers registration and reporting requirements under the Act – when he or she has
20

120444311727

received contributions or made expenditures in excess of \$5,000. 2 U.S.C. § 431(2).²

Commission regulations set out five non-exhaustive factors to be considered in determining whether an individual has become a candidate. These factors include an evaluation of whether the individual is (1) using general public political advertising to publicize his or her intention to campaign for Federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to raise campaign funds that would be spent after he or she becomes a candidate; (3) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time; and (5) taking action to qualify for the ballot under state law. 11 C.F.R. §§ 100.72(b); 100.131(b).

Within 15 days of meeting the \$5,000 threshold and becoming a candidate, an individual is required to designate a principal campaign committee by filing a Statement of Candidacy with the Commission. See 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). The principal campaign committee must then file a Statement of Organization within 10 days of its designation, see 2 U.S.C. § 433(a), and must file disclosure reports with the Commission in accordance with 2 U.S.C. § 434(a).

The available information indicates that Gooch is not a candidate for Congress and was not a candidate during the relevant period. Complainant's allegation that Gooch is a candidate

² However, "[f]unds received solely for the purpose of determining whether an individual should become a candidate are not contributions," and "[p]ayments made solely for the purpose of determining whether an individual should become a candidate are not expenditures." 11 C.F.R. §§ 100.72; 100.131. Such "testing the waters" activities include conducting polls, making telephone calls, and traveling to determine the viability of the potential candidacy. See 11 C.F.R. §§ 100.72(a); 11 C.F.R. § 100.131(a). An individual who is "testing the waters" need not register or file disclosure reports with the Commission unless and until the individual subsequently decides to run for Federal office or conducts activities that indicate he or she has decided to become a candidate. All funds raised and spent for "testing the waters" activities are, however, subject to the Act's limitations and prohibitions. *Id.*

12044311728

12044311729
1 for Congress in 2012 appears to be based on the direct mailer and the solicitation for donations
2 to Gooch's campaign committee on the SNJ website. When the mailer was circulated, Gooch
3 had lost the Republican primary, her former principal campaign committee had filed its final
4 disclosure report, and the Committee was approved for termination by the Commission. Both
5 the SNJ mailer and website are primarily focused on state issues and do not suggest that Gooch
6 is currently running for Congress or support her candidacy for a federal office. Although the
7 available information indicates that Gooch may be interested in running again for Congress in
8 2012, it does not appear that she has made any definite public announcements regarding her
9 future plans or has engaged in other activity that indicates she has decided to become a
10 candidate.

11 In a video interview posted on SNJ's home page, entitled "On the Record with Diane
12 Gooch," indicated as "uploaded by goocheampaign on April 7, 2011," Gooch is asked whether
13 she might "run against Frank Pallone in 2012."³ She tells the interviewer that she does not
14 know at this point since New Jersey may undergo re-districting, but she would "let you know,"
15 and "If I feel that I'm the best candidate and I can beat him then I would." See
16 <http://www.strengnewjersey.com/> (last visited on October 25, 2011); *see also*,
17 <http://vip.politicker.nj.com/45203/lites-vows-take-pallone-down> (discussing potential
18 candidates in the 6th district race and stating that Gooch "has not ruled out a run in 2012") and
19 http://blog.nj.com/niv_auditor/2011/06/assemblyman_joe_malone_is_about.html (stating that
20 Gooch has not decided whether she will run pending redistricting) (last visited on October 25,
21 2011).

³ We realize that the designation "goocheampaign" might facially suggest that Gooch was a candidate at the time, but the other information mentioned in this paragraph leads us to conclude she was not.

1 Although the SNJ website contained a solicitation for donations to the Gooch
2 Committee, and the response asserts that the SNJ website contained an "incorrect disclaimer"
3 that has been corrected, it does not dispute the allegation that it was a solicitation. It appears,
4 however, that SNJ and the website were established in August 2010, after Gooch had lost the
5 June 8, 2010, primary election, the Committee's disclosure reports do not reflect that Gooch
6 received any contributions after June 2010, and respondents deny receiving any contributions to
7 Gooch from the website.

8 Based on the above, we recommend that the Commission find no reason to believe that
9 Diane Gooch violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a) by failing to file a
10 Statement of Candidacy and to designate a principal campaign committee. Similarly, we
11 recommend that the Commission find no reason to believe that Diane Gooch for Congress, Inc.,
12 and Ronald Gravino, in his official capacity as treasurer, violated 2 U.S.C. §§ 433 and 434, by
13 failing to comply with the registration and reporting requirements for political committees.

14 **2. Allegations that SNJ Failed to Organize, Register, and Report as an**
15 **Authorized Campaign Committee of Gooch**
16

17 A candidate may designate additional political committees to serve as authorized
18 committees to receive contributions or make expenditures on behalf of the candidate. 2 U.S.C.
19 § 432(e)(1); 11 C.F.R. §§ 101.1(b) and 102.13(a)(1). Each authorized campaign committee is
20 required to file a statement of organization within 10 days after designation and file disclosure
21 reports. 2 U.S.C. §§ 433(a) and 434. The Act defines a "political committee" as any
22 committee, club, association, or other group of persons that receives "contributions" or makes
23 "expenditures" for the purpose of influencing a federal election which aggregate in excess of
24 \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The Act defines a contribution as "any
25 gift, subscription, loan, advance, or deposit of money or anything of value made by any person

12044311730

1 for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). An
2 expenditure is "any purchase, payment, distribution, loan, advance, deposit, or gift of money or
3 anything of value, made by any person for the purpose of influencing any election for Federal
4 office." 2 U.S.C. § 431(9)(A)(i). An organization will not be considered a "political
5 committee" unless its "major purpose is Federal campaign activity (*i.e.*, the nomination or
6 election of a Federal candidate)." Political Committee Status: Supplemental Explanation and
7 Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007). *See Buckley v. Valeo*, 424 U.S. 1, 79
8 (1976); *FEC v. Massachusetts Citizens for Life, Inc. (MCFL)*, 479 U.S. 238, 262 (1986).
9 Political committees must register with the Commission and must file disclosure reports
10 detailing all contributions and expenditures. *See* 2 U.S.C. §§ 433 and 434.

11 Complainant alleges that SNJ "is pretending to be a P.A.C.," but is not registered as
12 such, that it is "owned by the candidate," that it has spent over \$5,000 on the mailer, and it has
13 solicited and received contributions to the Gooch campaign from Gooch and others. As
14 discussed above, however, it does not appear that Gooch has triggered candidate status for the
15 2012 election cycle, and thus the costs associated with the mailer and website do not constitute
16 "contributions" or "expenditures" under the Act. Similarly, despite the solicitation on the SNJ
17 website for the Gooch campaign, it does not appear that SNJ received any contributions for the
18 Gooch campaign through its website or through other means.

19 In sum, SNJ does not appear to have received contributions or made expenditures of
20 \$1,000 or more in a calendar year in support of Gooch and thus it does not appear to be an
21

12044311731

1 authorized campaign committee of Gooch.⁴ Based on the above, we recommend that the
2 Commission find no reason to believe that Strong New Jersey, Inc., violated 2 U.S.C. §§ 433
3 and 434 by failing to comply with the registration and reporting requirements for political
4 committees.

5 **3. Allegations Relating to Use of the Return Address on the Mailers**

6 Under the Act, corporations are prohibited from making contributions from their general
7 treasury funds in connection with any election of any candidate for federal office. 2 U.S.C.
8 § 441b(a). A candidate, political committee, or other person is prohibited from knowingly
9 accepting or receiving any corporate contribution. *Id.*

10 Complainant alleges that SNJ's use of the *Two River Times* return address on the mailers
11 may have been a prohibited in-kind corporate contribution from the newspaper to SNJ. As
12 noted above, however, the available information does not indicate that SNJ is a political
13 committee under the Act. Accordingly, any in-kind donations from the *Two River Times* to SNJ
14 would not constitute an impermissible contribution under the Act. Therefore, we recommend
15 that the Commission find no reason to believe that the *Two River Times* and SNJ violated
16 2 U.S.C. § 441b in connection with the use of the return address on the mailers.

⁴ The Complaint does not allege that SNJ solicited or received contributions for other federal candidates or that it made expenditures in support of or in opposition to other federal candidates. However, SNJ's website contains a press release indicating that it broadcast an ad in October 2010 opposing Representative John Adler, a candidate in New Jersey's Third Congressional District, and SNJ's IRS filings disclose payments in October 2010 of over \$60,000 to a media vendor for a "cable buy" and "production." The video of the ad itself is not on the SNJ website, but is on YouTube. See <http://www.youtube.com/watch?v=Ea4bKWHrtg> (last visited on Oct. 3, 2011). The ad does not mention Adler's federal candidacy and focuses on tax policy, but was broadcast just before the election and includes the tagline "Say No to John Adler and Higher Taxes," *Id.* The disclaimer states that SNJ paid for the ad. This ad appears to qualify as an electioneering communication and possibly an independent expenditure, but SNJ has not filed any electioneering communication or independent expenditure report with the Commission. Nevertheless, given that the amounts of the potential reporting violation are not exactly known, we are not addressing any potential violations arising from the Adler ad. However, once this case is closed, we plan to contact SNJ's counsel and advise that SNJ has not reported the transaction to the Commission. See MUR 6403 (Alaskans Standing Together), First General Counsel's Report, p.22, n.7, (recommending no finding as to an apparent \$35,000 reporting error not alleged in the complaint, but proposing to advise respondent that the transaction was not reported).

III. RECOMMENDATIONS

1. Find no reason to believe that Diane Gooch violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a);
2. Find no reason to believe that Diane Gooch for Congress, Inc., and Ronald Gravino, in his official capacity as treasurer, violated 2 U.S.C. §§ 433 and 434;
3. Find no reason to believe that Strong New Jersey violated 2 U.S.C. §§ 433, 434 and 441b;
4. Find no reason to believe that the *Two River Times* violated 2 U.S.C. § 441b;
5. Approve the attached Factual and Legal Analysis; and
6. Approve the appropriate letters.

Anthony Herman
General Counsel

Date

11/21/11

Stephen Gura
Deputy Associate General Counsel
for Enforcement

Peter G. Blumberg
Assistant General Counsel

Dominique Dillenseger
Attorney